

Capri Place HOA ASSOCIATION of Carlsbad

- **Special Homeowner Meeting**
- **Feb 15, 2023**
- **Harding Center**
- **5:00 – 7:00 PM**
- **Subject:**
- **Hillside Wall Replacement**





Housekeeping

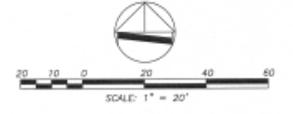
- Please sign up now if you would like to speak tonight
- We have limited time and will need to allot each person a finite amount of time to express their opinions, so that everyone can be heard
- When you are called, please state your name and lot number if you know it
- Please do not interrupt the person speaking
- Please keep comments from the audience until the end



Hillside Wall Replacement Summary

- The HOA Board contacted a number of contractors who provided opinions on whether the wall could be repaired or would need replacement
 - They all concluded that based on its current condition the wall cannot be repaired
- Letter sent to all homeowners in December, 2022 explaining the issues and HOA Board actions
- Issues were:
 1. Who is responsible for replacing/repairing the wall, the homeowners whose lots are backed by the wall, the Capri HOA, or is the responsibility joint between the HOA and the affected homeowners?
 2. What is the most cost-effective replacement for the wall?
 3. How do we pay for the wall to be replaced, depending on who is responsible for its replacement?
- HOA paid for survey of wall to determine where it stands relative to Open Space Easement vs. Homeowner maintained property
 - Survey concluded that the wall between the monuments is on HOA Open Space Easement
- HOA Attorney was consulted regarding legal requirements based on CC&R's and State law
 - Attorney concluded that HOA is responsible for wall replacement since it is on Open Space Easement
- Board plans to increase reserve allocation in dues to pay for replacement of reserve funds that will pay for the wall replacement

TOPOGRAPHICAL SURVEY OF EXISTING WALL



SURVEYOR'S STATEMENT
 THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYOR'S ACT AS THE REQUEST OF SUNSET PLACE HOA IN CALIFORNIA, IN AUGUST, 2022.

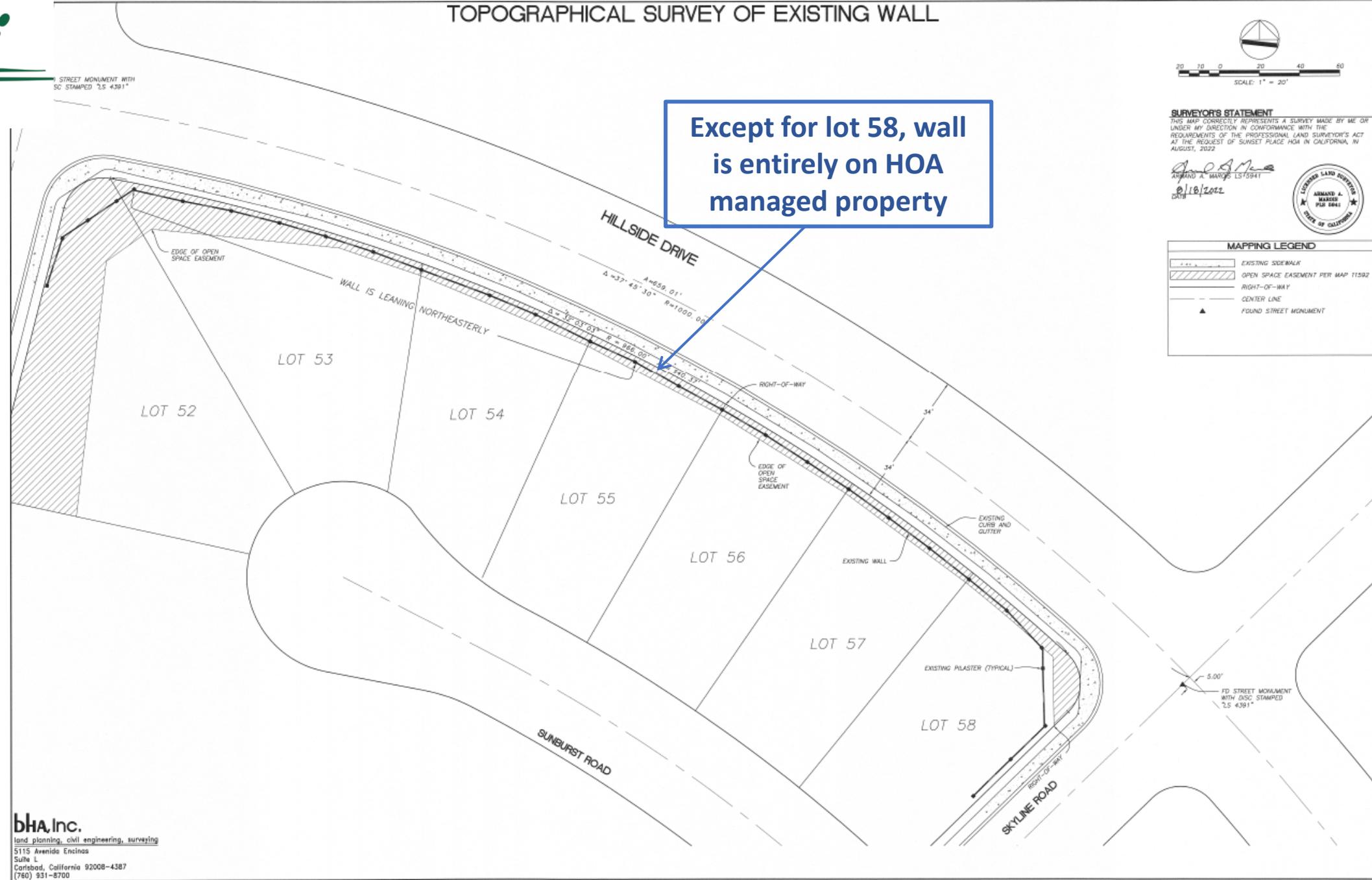
Armando A. Marquez
 ARMANDO A. MARQUEZ LS75941
 08/18/2022
 DATE



MAPPING LEGEND

	EXISTING SIDEWALK
	OPEN SPACE EASEMENT PER MAP 11592
	RIGHT-OF-WAY
	CENTER LINE
	FOUND STREET MONUMENT

Except for lot 58, wall is entirely on HOA managed property





HOA Attorney Analysis

- The CC&R's state that although owners are generally responsible for maintenance of improvements upon their property, Article XII specifically provides an exception for the Slope Area (Open Space Easement) described on Map No. 11592. Sheet 9 on that Map also provides that the Open Space Easement is to be maintained by the Homeowners Association.
- Since the survey showed that the wall constructed originally by the developer on that slope area is within the Open Space Easement, then that wall is the responsibility of the Association to maintain and repair.
- Furthermore, the wall and entry monuments provide the first impression of Capri and their continued repair and maintenance enhance the value of all of our properties. Relying upon individual owners to maintain their separate portions of the wall could lead to differing levels of maintenance and repair and result in a less than appealing entry to our neighborhood.



Paying for the Wall Replacement

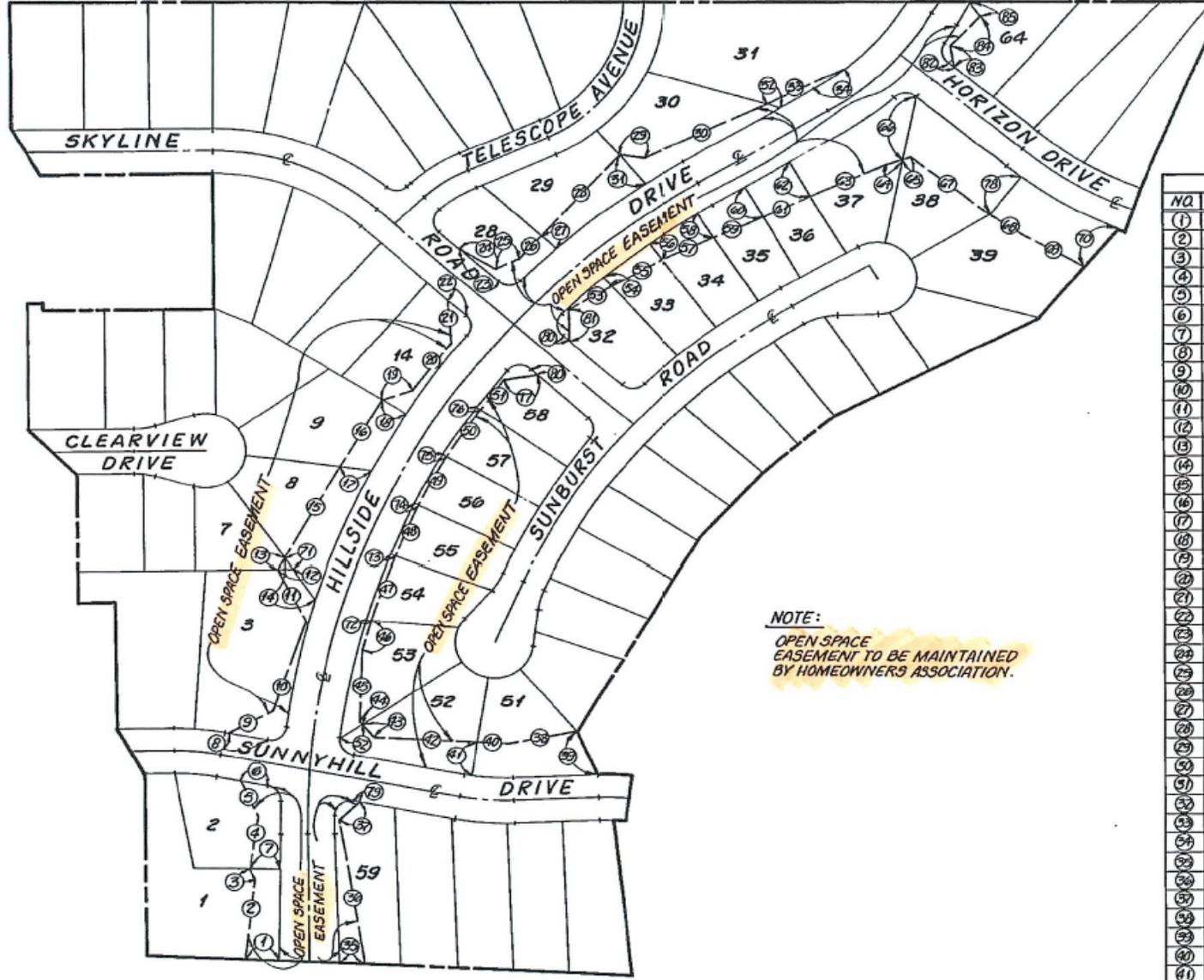
- Bids from several contractors were obtained for replacing the wall ranging from \$203,000 to \$400,000 depending on material
- The HOA Board has decided to replace the wall with concrete block wall covered with stucco to match the current look, for \$217,000
 - This is the most cost-effective solution for the long run
- There are sufficient funds in reserves to pay for the wall, but they will be depleted
 - The Board has decided to raise the reserve payment each month by \$20.20 per month per homeowner for 5 years, which will replenish the reserve account to the required amount
 - This brings the total for the current dues to \$187 per homeowner per month.



Homeowner Issues Raised and HOA Attorney Responses

- Article XIII of the Declaration of Covenants, Conditions and Restrictions (CC&Rs) says that fences constructed by Declarant shall be repaired, maintained and replaced by and at the expense of the owners of the lots.
 - The sentence immediately preceding limits owner maintenance to “fences along the boundary lines of certain lots, which fences shall separate lots from each other”. The walls in question along Hillside Drive and certain other streets do not separate lots from each other. Article XIII is referring to fences between neighboring lots. This is made clear later on in Article XIII which provides that owners are to share equally in the responsibility for repair maintenance and replacement of the fence separating their respective lots. The wall in question was built on the easement that burdens the lots along Hillside and Sunnyhill Drive.
 - Some of the slopes upon lots are also burdened by an Open Space Easement. Article I, Section 20 of CC&Rs describes a Slope Area as located on certain lots which is to be maintained by the Association. The description is attached to the CC&Rs as Exhibit C and specifies the slope area as the “Open Space Easement To Be Maintained by Homeowners Association” as shown on Sheet 9 of Map No. 11592 (next slide). The Open Space Easement runs along Hillside Drive and Sunnyhill Drive, part of Horizon Drive and the corners along Skyline Road (see map). The wall in question was built on the easement that burdens the lots along Hillside and Sunnyhill Drive.

CARLSBAD TRACT 85-18 PANNONIA UNITS 18&2



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NOTE:
OPEN SPACE
EASEMENT TO BE MAINTAINED
BY HOMEOWNERS ASSOCIATION.



Homeowner Issues Raised and HOA Attorney Responses

- The HOA may not incur aggregate expenditures for capital improvements in any fiscal year in excess of five percent of the budgeted gross expenses of the Association for that fiscal year without a majority vote of the homeowners.
 - This is true, however a capital improvement for purposes of an HOA is considered the addition of a new amenity. Repair or reconstruction of an existing wall is not a capital improvement.
- The wall benefits only certain owners so they should pay to replace it.
 - That is only an opinion. The Board has determined and is of the opinion that because the wall and entry monuments offer a first impression of the community. Maintenance of the wall helps maintain property values for all members of the HOA. Without proper and uniform maintenance and/or repair the community may have a haphazard appearance, which would negatively affect all property values.
- The original budget recorded with the County of San Diego only has 120 feet of wall/fencing to be replaced.
 - The Budget page provided was from May 1986 and includes a line item for 120LF wall. It also includes a line item for New Construction, without any further information. The Map was executed in August 1986. The CCRs were recorded September 1986 and the Second Amendment was not recorded until 1988. As projects proceed during construction, sometimes a developer will add an amenity or a wall that was not listed in their original submissions. Sunset Place was constructed in several phases, and it is likely that the wall and entry monument in question were constructed by the developer during this time.



Homeowner Comments/Discussion

